



In light of *Sojenhomer v. Egg Harbor*, 2024 WI 25, WI Supreme Court Decision

On July 12, 2024, this information was emailed to all WisDOT Real Estate staff, Real estate consultant staff, Local Program Project Managers, and all external locals/municipalities on the local program email distribution list.

As you may be aware, on the morning of Wednesday June 19, 2024, the Supreme Court issued their decision regarding *Sojenhomer v. Egg Harbor*, 2024 WI 25. The Supreme Court decision reversed a prior Court of Appeals decision wherein condemnation for sidewalks was prohibited. Please see attached the Supreme Court decision for your review.

Referenced from the Wisconsin Supreme Court decision, "Pedestrian ways are "walk[s] designated for the use of pedestrian travel," while sidewalks are a portion of the adjoining highway or roadway "constructed for use of pedestrians." (p.16).....[S]idewalks are not unusual or unfamiliar. Rather, they are a ubiquitous feature of road projects across the state. If the legislature wanted to prohibit the use of condemnation to build sidewalks anywhere in the state, then they could have done so clearly (p.19)....[B]ut they did not. Instead, they incorporated a seldom-used phrase, "pedestrian way," which context and history indicate does not include sidewalks. Given that, we conclude that the definition of "pedestrian way" in § 346.02 (8) (a) does not include sidewalks, and accordingly hold that the limitations on condemnation in § § 32.015 and 61.34 (3) (b) did not prohibit the Village from condemning Sojenhomer's property to build a sidewalk. *By the Court*.-the decision of the court of appeals is reversed." (p.21).

Since the Supreme Court has reversed the court of appeals decision, the Wisconsin Department of Transportation (WisDOT) will again acquire parcels for sidewalks in highway projects under the Chapter 32 eminent domain process.

We are aware that there are State/WisDOT and LPA sidewalk projects/parcels that had started with the §32.015 condemnation limitations and are currently in the real estate acquisition negotiation process. Following is the WisDOT approved guidance to proceed regarding sidewalk projects/parcels in the negotiation phase and all outstanding sidewalk parcels to be acquired; however, with that being stated, **a local public agency (LPA) should confer with their legal counsel on the decision and how to proceed with their process forward on their highway improvement projects.**

1. The original offer made (with condemnation limitations), must be rescinded.
2. The attached "Sojenhomer Offer Recission Ltr" language must be used when rescinding the original offer and extending the new offer to alert the property owner condemnation can now be utilized.
3. The Eminent Domain brochure/pamphlet ("The Rights of Landowners Under Wisconsin Eminent Domain Law") MUST be provided to the property owner(s) in the new offer packet.
4. If an appraisal report was previously completed per the original offer on any of the outstanding sidewalk parcels and is six months or older, it will need to be updated per WisDOT policy and procedures prior to rescinding the original offer and extending a new offer with the use of the normal Chapter 32 acquisition process. This is because the original appraisal report should have had all condemnation language removed due to the condemnation limitations. That needs to be replaced.
5. The normal Chapter 32 Eminent Domain acquisition process (without limitations) can be resumed as outlined in the WisDOT Real Estate Program Manual.

WisDOT is aware that rescinding offers and making new offers may add additional time to project schedules. If this will cause your project to miss deadlines, it is permissible to proceed with acquiring sidewalk on a voluntary basis. **However, if you elect to acquire outstanding sidewalk parcels through the condemnation process, you must follow the above outlined process (steps 1 through 5) to be compliant with the Uniform Act.**

Please note that the above guidance only applies to projects where the interest areas being acquired are not changing and negotiations under the prior sidewalk condemnation limitations have already begun. **This outlined process does not apply to projects in the design or beginning acquisition stages where offers have not been extended to property owners. These projects may be acquired via the normal Chapter 32 process.**

This outlined process and the *Sojenhomer v. Egg Harbor*, 2024 WI 25, case decision ONLY applies to sidewalk related projects/parcels and does not apply to new and expanding trail and/or bike paths and lanes.

If you have any questions or concerns as we proceed with re-implementing the normal Chapter 32 acquisition process for sidewalks, **please do not hesitate to contact me.** Thank you all for your continued patience over the past few days and your continued hard work acquiring our highway projects.

Kind Regards,

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